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United States Court of Appeals for the Federal Circuit

02-1592

ANCHOR WALL SYSTEMS, INC.,

Plaintiff-Appellant,

v.

ROCKWOOD RETAINING WALLS, INC.,
GLS INDUSTRIES, INC., EQUIPMENT, INC.,
RAYMOND R. PRICE, and GERALD P. PRICE,

Defendants-Appellees.

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J. Derek Vandenburg, Carlson, Caspers, Vandenburg & Lindquist, P.C., of Minneapolis, Minnesota, argued for plaintiff-appellant. With him on the brief was Alan G. Carlson.

Randall T. Skaar, Patterson, Thuent, Skaar & Christensen, P.A., of Minneapolis, Minnesota, argued for defendants-appellees. With him on the brief were Eric H. Chadwick and Scott G. Ulbrich. Of counsel on the brief was Malcolm L. Moore, Moore & Hansen, of Minneapolis, Minnesota.

Appealed from: United States District Court for the District of Minnesota

Senior Judge David S. Doty

a. "Generally Parallel"

Claims 38 and 50 of the '015 patent as well as claims 30 and 43 of the '713 patent require "a bottom face which is generally parallel to the top face." '015 patent, col. 18, ll. 22-23; id. at col. 16, ll. 42-43; '713 patent, col. 14, ll. 20-21; id. at col. 15, ll. 53-54 (emphasis added). Because "[parallelism] is a mathematical concept that is either true or false," Anchor, 252 F. Supp. 2d at 853, the district court interpreted "generally parallel" to be limited to the ordinary meaning of "parallel." Id. at 852. This was error.

While the term "generally parallel," as the district court noted, is mathematically imprecise, we note that words of approximation, such as "generally" and "substantially," are descriptive terms "commonly used in patent claims 'to avoid a strict numerical boundary to the specified parameter.'" Ecolab, Inc. v. Envirochem, Inc., 264 F.3d 1358, 1367 (Fed. Cir. 2001) (quoting Pall Corp. v. Micron Separations, Inc., 66 F.3d 1211, 1217 (Fed. Cir. 1995)); see, e.g., Andrew Corp v. Gabriel Elecs. Inc., 847 F.2d 819, 821-22 (Fed. Cir. 1988) (noting that terms such as "approach each other," "close to," "substantially equal," and "closely approximate" are ubiquitously used in patent claims and that such usages, when serving reasonably to describe the claimed subject matter to those of skill in the field of the invention and to distinguish the claimed subject matter from the prior art, have been accepted in patent examination and upheld by the courts). And, while ideally, all terms in a disputed claim would be definitively bounded and clear, such is rarely the case in the art of claim drafting. In this case, exact parallelism is sufficient, but not necessary, to meet the limitation of the claim term "generally parallel."

It is undisputed in this case that ordinarily, "parallel" means "everywhere equal distant." Anchor, 252 F. Supp. 2d at 852 (citing Merriam-Webster Collegiate Dictionary 842 (10th ed. 1998)). Additionally, the relevant definition of "generally" is "in disregard of specific instances and with regard to an overall picture; on the whole, as a rule." Webster's Third New International Dictionary 945. Because the claim language itself expressly ties the adverb "generally" to the adjective "parallel," the ordinary meaning of the phrase "generally parallel" envisions some amount of deviation from exactly parallel. It is the claim limitation, as a whole, that must be considered in claim construction. Apex, 325 F.3d at 1374.

The written description does not specify any special definition for the terms "generally," "parallel," or the phrase "generally parallel." See, e.g., '015 patent, col. 5, ll. 5-6 ("The top surface 26 generally lies parallel to the bottom surface 28."); '713 patent, col. 5, ll. 10-11 (same). Moreover, nothing in the prosecution history of the '015 patent family clearly limits the scope of "generally parallel" such that the adverb "generally" does not broaden the meaning of parallel. Accordingly, we hold that the phrase "generally parallel" envisions some amount of deviation from exactly parallel.

b. "Substantially Horizontal"

Anchor also argues that, by not interpreting the only disputed term, "substantially horizontal," in claim 61 of the '713 patent, the district court erred as a matter of law. We agree. In order to review the court's finding of noninfringement, we must know what meaning and scope the district court gave to the asserted claims. Graco Inc. v. Binks Mfg. Co., 60 F.3d 785, 791 (Fed. Cir. 1995). From the district court's opinion, there is no basis for concluding that the district court performed either of the two steps required